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Taxpayer maintains two Plans to pay benefits to participants who are injured or killed in the line of duty and their survivors. Taxpayer adopted Plan X pursuant to the predecessor to Statute A. Plan X provides disability benefits to participants who meet Plan X's eligibility requirements and life insurance and dependent survivorship benefits to their beneficiaries. Taxpayer adopted Plan Y pursuant to the predecessor to Statute

B. Plan B provides retirement and disability benefits to participants who meet Plan Y's eligibility requirements and death benefits to their beneficiaries.

Article II, Section 3(a) and (b) of Plan X defines how a line of duty disability is determined and the amount and duration of disability benefits. Section 3(a) provides that a participant shall not be eligible for a disability benefit under Plan X if his disability occurs outside the line of duty and if at the time of disability he had less than one year of credited service. Section 3(b) provides that a participant disabled under section 3(a) is entitled to a benefit under Plan X payable for life or until recovery from the disability. The benefit shall be equal to the retirement benefit to which the participant would be entitled under Plan Y as of the date the disability arises, calculated assuming that the participant had completed 32 years of service and became disabled at age 50, regardless of actual years of credited service.

Section 4 of Plan X governs cost of living adjustments to disability benefits and provides that participants who have reached age 55 are entitled to an increase in monthly benefit amount.

Article VIII, Section 8.02 of Plan Y, as amended, provides a benefit payable upon the death of a participant in the line of duty. In the event of death in the line of duty, the participant's designated beneficiary shall receive an amount based on what the participant would have been entitled to had he retired immediately prior to death with 32 years of service at age 50, regardless of actual years of credited service.

Article VIII, Section 8.05 of Plan Y, as amended, provides a benefit upon the death of a participant who was disabled in the line of duty and who does not recover and return to active employment with Taxpayer. The participant's beneficiary will be entitled to a death benefit calculated under section 8.02, above, assuming that the participant died immediately prior to becoming disabled, and less the total amount of disability benefits paid to the participant from Plan X or Plan Y during his period of disability.

Article VII, Section 7.02 (a), (b) and (d) of Plan Y governs disability benefits payable under Plan Y. Upon a determination of disability under section 7.02(a), section 7.02(b) provides that benefits will continue until cessation of disability or the aggregate amount of monthly payments equals the participant's net amount of contributions with interest to the date of termination of employment. Section 7.02(d) governs the amount and duration of benefits. Participants injured in the line of duty receive a benefit calculated as though the participant had retired immediately prior to his date of disability with 32 years of service. Participants not injured in the line of duty receive a benefit calculated assuming the greater of 20 years of service or the participant's actual years of service.

Section 104(a)(1) of the Code states that, "Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc. expenses) for any prior taxable year, gross income does not include--(1) Amounts

received under workmen's compensation acts as compensation for personal injuries or sickness... .”

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

Accordingly, based on the representations made, and authorities cited above, we conclude as follows:

- (1) Benefits paid to a participant under Article II, Section 3(a) and (b) of Plan X are paid pursuant to a statute in the nature of workmen's compensation and amounts paid are excludable from the participant's gross income under section 104(a)(1).
- (2) Amounts paid to a participant under Section 4 of Plan X are includible in the participant's gross income because the amount is calculated by reference to the participant's age.
- (3) Benefits payable under Article VIII, Section 8.02 of Plan Y, as amended, to a survivor upon a participant's death from a cause suffered in the line of duty are excludable from the survivor's gross income under section 104(a)(1).
- (4) Benefits paid under Article VIII, Section 8.05 of Plan Y, as amended, to a survivor of a participant disabled in the line of duty, are excludable from the survivor's gross income under section 104(a)(1).
- (5) Benefits paid under Article VII, Section 7.02(a), (b) and (d) of Plan Y are includible in a participant's gross income because the amounts paid are calculated by reference to the participant's prior contributions.

This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Harry Beker
Chief, Health and Welfare Branch
Office of Division Counsel/Associate Chief
Counsel
(Tax Exempt & Government Entities)